

No. 11285.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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JOSEPHINE GONZALES,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee,*

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APPELLEE'S BRIEF.

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JAMES M. CARTER,

*United States Attorney,*

ERNEST A. TOLIN,

*Assistant U. S. Attorney,*

WILLIAM STRONG,

*Assistant U. S. Attorney,*

600 U. S. Postoffice and Courthouse Building,  
Los Angeles 12, California,

*Attorneys for Appellee.*

FILED  
MAR 27 1947



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**Jurisdiction.**

Appellant was indicted under the Narcotic Drugs Import and Export Act (21 U. S. C. §174), the Harrison Narcotic Act (26 U. S. C. 2553(a)) and Section 37 of the Criminal Code (18 U. S. C. 88), [R. 2-5.]<sup>1</sup>

The District Court had jurisdiction under Section 24 of the Judicial Code (28 U. S. C. 41(2)). Judgment was entered March 18, 1946 [R. 14].

Notice of appeal was filed on March 22, 1946 [R. 14-15]. This Court has jurisdiction under Section 128 of the Judicial Code (28 U. S. C. 225).

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<sup>1</sup>The references preceded by the letter "R" are to the printed record on appeal in this case; those preceded by the reference "A. B." are to the appellee's brief.

### Statutes Involved.

The Narcotic Drugs, Import and Export Act provides in part as follows (21 U. S. C. 174):

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assist in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon conviction be fined not more than \$5,000 and imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.”

The Harrison Narcotic Act provides in part as follows (26 U. S. C. 2553(a)):

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps for any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be prima facie evidence of liability to such special tax.”

### Statement of the Case.

On January 9, 1946, the appellant and one Jesus Santana were indicted in the United States District Court for the Southern District of California, Central Division, in three counts, which charged, respectively, violations of the Narcotic Drugs Import and Export Act, in Count I [R. 2-3], the Harrison Narcotic Act, in Count II [R. 3], and a conspiracy to commit an offense against the United States with reference to the receipt, transportation and concealment of opium imported contrary to the laws of the United States, in Count III [R. 3-5].

On February 19, 1946, the District Court denied motions to suppress evidence [R. 10-11], and on February 20, 1946, a trial was had before the District Court and a jury [R. 11, 18 ff.]. On February 21, 1946, appellant and her co-defendant were both found guilty as charged in Counts I and II of the Indictment [R. 11-12]. Thereafter, on March 18, 1946, the District Court sentenced the appellant to imprisonment for a period of three years, and to pay a fine of \$10 on Count I, suspending imposition of sentence on Count II for a period of five years, commencing at the expiration of the sentence on Count I, during which five-year period the defendant was to remain on probation [R. 12-14].

### Question Presented.

The sole question presented by the appellant upon this appeal is whether the two statutes under which she was convicted are constitutional.

### Argument.

We see no point in engaging in extensive discussion as to the constitutionality of the two statutes involved in this case; their constitutionality, and in particular the evidentiary presumptions which the statutes permit from the unexplained possession of narcotics, have been judicially considered and upheld. See, *e. g.*, *Yee Hem v. United States*, 268 U. S. 178; *Brolan v. United States*, 236 U. S. 216; *United States v. Doremus*, 249 U. S. 86; *Casey v. United States*, 276 U. S. 413; *Teter v. United States*, 12 F. (2d) 224 (C. C. A. 7), cert. den. 273 U. S. 706; *Hooper v. United States*, 16 F. (2d) 868 (C. C. A. 9); *Rosenburg v. United States*, 13 F. (2d) 369 (C. C. A. 9); *Ng Choy Fong v. United States*, 245 F. 305; (C. C. A. 9), cert. den. 245 U. S. 669; *Ng Sing v. United States*, 8 F. (2d) 919 (C. C. A. 9); *Parmagin v. United States*, 42 F. (2d) 721 (C. C. A. 9), cert. den. 283 U. S. 818; *Howard v. United States*, 75 F. (2d) 562 (C. C. A. 7), cert. den. 295 U. S. 740; *Morlen v. United States*, 13 F. (2d) 625 (C. C. A. 9); *Pon Wing Quong v. United States*, 111 F. (2d) 751 (C. C. A. 9); *Mullaney v. United States*, 82 F. (2d) 638 (C. C. A. 9); *United States v. Liss*, 105 F. (2d) 44 (C. C. A. 2); *Beland v. United States*, 100 F. (2d) 289 (C. C. A. 5), cert. den. 306 U. S. 636; *Wong Lung Sing v. United States*, 3 F. (2d) 780 (C. C. A. 9).

We also see no point in discussing the holding of the various cases cited by appellant in her brief (A. B. 5, 6, 14), which deal with generalities and principles of no moment to this case.



Nor does there appear to be any necessity for discussing the purported distinctions which appellant apparently seeks to draw in her brief between the holding in the cases which sustain the constitutionality of the statutes in this case, and her theory of unlawful delegation of power by the Congress of the United States (A. B. 3, *ff.*), and the asserted vagueness and indefiniteness of the statutory provisions (A. B. 9, *ff.*). Suffice it to say that the statutes in this case have been held to be constitutional both as to their terms and provisions, and with reference to the constitutionality of Congress' action in legislating as it did. (See, for example, the cases cited above.)

### Conclusion.

There is patently no merit to the contentions made by appellant. The statutes in this case have been declared constitutional, both by the Supreme Court and various Circuit Courts of Appeal, including this Court. The judgment should be affirmed.

Respectfully submitted,

JAMES M. CARTER,  
*United States Attorney,*  
ERNEST A. TOLIN,  
*Assistant U. S. Attorney,*  
WILLIAM STRONG,  
*Assistant U. S. Attorney,*  
*Attorneys for Appellee.*

